

BOB BURCH

IBLA 75-450

Decided September 12, 1977

Appeal from decisions of the Utah State Office, Bureau of Land Management, denying appellant's petitions for reinstatement of oil and gas leases U-13196, U-13198, U-13237 and U-13238.

Affirmed.

1. Accounts: Payments--Applications and Entries: Filing--Oil and Gas Leases: Generally--Payments: Generally

The authorized officer may not deem an oil and gas rental payment to have been timely filed, pursuant to 43 CFR 1821.2-2(g) if it is received at the State Office when it is not open to the public, even though the payment is presented on the last day in which payment can be made. Such payment is deemed to have been made on the day and hour the office is next open to business, as provided in 43 CFR 1821.2-2(d).

2. Accounts: Payments--Applications and Entries: Filing--Oil and Gas Leases: Generally--Payments: Generally

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental on time as required by § 31 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), where, 20 minutes before the State Office closes to the public on the last day on which rental can be paid, petitioner instructs by telephone an agent who lives in the vicinity of the State Office to make the payment and the agent who alleges she was delayed by traffic and security measures

makes payment after the office is closed to the public. In such circumstances the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

APPEARANCES: Eugene A. Reidy, Esq., of Moran, Reidy & Voorhees, Denver, Colorado, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE RITVO

Bob Burch has appealed from identical decisions of the Utah State Office, Bureau of Land Management (BLM), dated March 31, 1975, denying his petitions for reinstatement of oil and gas leases U-13196, U-13198, U-13237 and U-13238. The leases terminated automatically upon appellant's failure to pay the annual rental on or before the due date as required by 30 U.S.C. § 188(b) (1970). The relevant portion of the statute provides that:

[U]pon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law.

Payment on appellant's leases was due on Saturday, March 1, 1975. Because the BLM offices were closed on that day, permissible tender of payment was extended through March 3, 1975. 43 CFR 3108.2-1(a). Payment was personally tendered by appellant's agent at 4:13 p.m., on March 3, 1975. In its decision, the BLM described the circumstances as follows:

Bureau hours for business are open from 10:00 A.M. to 4:00 P.M. standard time or daylight savings time Monday through Friday (43 CFR 1821-1(a)). Mr. Burch [who lives in Denver, Colorado] states he called Dorothy Jones at her home [in Wood Cross, Utah] at exactly 3:40 P.M. local time allowing her a mere 20 minutes for her to pay his rentals. Mrs. Jones stated that she was delayed by heavy traffic on her way to the Utah State Office [in Salt Lake City] and was delayed somewhat more by the security guard located in the lobby of the building in requiring individuals entering to show proper identification. At 4:02 P.M., March 3, 1975, Mrs. Jones arrived at the proper office however her check was deficient by more than 10%. She in turn submitted another check for the proper amount which accounts for the 4:13 P.M. payment.

The BLM determined that the delinquency in payment was caused by appellant's failure to provide ample time for payment, and concluded that the failure to make timely payment was, therefore, not justifiable and was due to a lack of reasonable diligence. Accordingly, appellant's petitions for reinstatement were denied.

In his statement of reasons on appeal, appellant does not dispute the facts as set forth by the BLM, but urges that the delay in payment was "justifiable" as his agent was delayed in the intensified identification precautions taken by security guards as a result of "a 'bomb scare' in the Federal Office Building."

[1] At the outset we note that presentation of the rentals after the hours during which the office was open to business does not constitute payment on that day. The regulations provide:

Office hours; place for filing.

(a) The offices listed in paragraph (d) of this section are open to the public on Monday through Friday for the filing of applications and other documents and inspection of records from 10 a.m. to 4 p.m., standard time or daylight saving time, whichever is in effect at the city in which the office is located, with the exception of those days when the office may be closed because of a national holiday or by Presidential or other administrative order.

(b) Applications and other documents cannot be received for filing by the authorized officer out of office hours, nor elsewhere than at his office; nor can affidavits or proofs be taken by him except in the regular and public discharge of his ordinary duties.

43 CFR 1821.2-1.

Any document required or permitted to be filed under the regulations of this chapter, which is received in the proper office, either in the mail or by personal delivery when the office is not open to the public, shall be deemed to be filed as of the day and hour the office next opens to the public.

43 CFR 1821.2-2(d).

The Department has considered comparable situations involving after hour filings several times.

In Floyd Childress, 62 I.D. 73 (1955), the Acting Solicitor discussed in detail the policy justifying the requirement that documents be filed in the land office during business hours. There a lessee made his application for extension of an oil and gas lease, which under the law then in effect was required to be filed prior to the expiration of the initial 5-year term, to the manager of the Santa Fe land office at his residence address. It was received in Santa Fe after the close of the land office's business hours and delivered to the manager at his home, either that evening (a Friday) or the next morning.

After pointing out that there had been some confusion in the practice of receiving filings outside office hours, despite instructions issued on September 4, 1884, that the duties of the land office are to be discharged only in the land office during hours devoted to public business, the Acting Solicitor reviewed the past practices, the definitive resolution of the problem in 1922, and the evils attendant upon permitting filing to be made other than in the land office during business hours. He stated:

After the issuance of the instructions, [in 1884] the rulings of the Department with respect to applications received outside of office hours were not consistent. See John W. Nicholson, 9 L.D. 54 (1889); Kelso v. Janeway et al., 22 L.D. 242 (1896); McDonald et al. v. Hartman et al., 19 L.D. 547, 554 (1894); and Giroux v. Scheurman, 23 L.D. 546 (1896). In the last case cited, an adverse claim against an application for a mining patent was filed in the land office at 8:30 p.m. on the last day permitted for filing such claims. It was rejected by the register as being filed out of time. The Department held that while he could have refused to accept and file the claim, he did not do so and the claim would therefore be regarded as timely filed.

On October 25, 1922, when the same question was presented again, i.e., whether a land office could accept an adverse claim after the closing hour of 4:30 p.m. but before midnight of the last day for filing, First Assistant Secretary Finney directed that such a claim should not be received or accepted. 49 L.D. 326. He referred to a circular issued on January 25, 1904, which provided:

Applications to make entry can not be received by the register or receiver out of office hours, nor elsewhere than at their office, nor can affidavits or proofs be taken by either of them except in the regular and public discharge of their ordinary duties.

He also referred to the instructions issued on September 4, 1884, and the statement in Giroux v. Scheurman, *supra*, that local officers can refuse to accept adverse claims tendered outside of office hours, and said:

From the foregoing it is apparent that all local land office business should be transacted at the land office and during office hours only. If applications or adverse claims, or other papers are received or accepted by the local officers outside of the office or after office hours, an opportunity is presented for the exercise of favoritism and partiality which might lead to much mischief and afford grounds for questioning the integrity of the service. [49 L.D. 327.]

The regulation of January 25, 1904, has remained in effect without any change (except to substitute "manager" for "register and receiver") up to the present time (43 CFR 210.2; 19 F.R. 9048).

There is little doubt, therefore, that a manager cannot accept applications in an official capacity outside of regular office hours and that applications delivered to him at such times are not to be considered filed upon such delivery. At the most, the manager can be deemed only to be the agent of the applicant for the purpose of seeing to it that the application is delivered to the land office for proper filing during official hours of business. There is, of course, no obligation on the manager to perform this task.

It is obvious that any other conclusion would lead to the evils long ago referred to in the early departmental decisions and rulings cited above. Particularly in the case of applications for noncompetitive oil and gas leases under section 17 of the Mineral Leasing Act, where a preference right to a lease is obtained by the first qualified applicant, managers would be besieged at all hours of the day and night by applicants seeking to file first.

\* \* \* \* \*

A few months later the Deputy Solicitor discussed the same problem again and again concluded that a document not filed during business hours on the last day permitted for filing is to be deemed to have been filed the next day and cited several court decisions so holding: Mattie B. Kinsey, 62 I.D. 334 (1955).

The issue was examined again in Earl C. Hartley, 65 I.D. 12 (1958). There a request for a 5-year extension of an oil and gas lease was filed by the delivery of a telegram to the land office door at 10:56 p.m. on the last day on which an application could be filed. It was time stamped as being received at 10:00 a.m. on the next business day. The Deputy Solicitor held (at 22).

This leaves for consideration the telegraphic request for extension filed by the company on August 31, 1956.

In its brief in answer to the appellants' appeals to the Secretary the company asserts that the 5-year extension paragraph of section 17 of the Mineral Leasing Act, which provides that--

\* \* \* No extension shall be granted, however, unless within a period of ninety days prior to such expiration date an application therefor is filed by the record titleholder \* \* \* [*italics added.*]

may be literally interpreted to mean that an owner of an oil and gas lease has until the expiration date of the lease to file an application, regardless of when the land office may be open for business; that consequently as the lease in this case would have expired at midnight on August 31, 1956, the lessee had until that time to file the application and, as a matter of fact, the application was actually filed before that time inasmuch as the telegraphic request for an extension was dropped in the land office before the expiration of the lease.

The courts have taken varying positions on this question. In Hilker & Bletsch Co. v. United States, 210 F.2d 847 (7th Cir. 1954), the court held a tax claim was not timely filed where the claimant arrived at the tax office at 4:35 p.m., and found the office had closed at 4:30 p.m. The court relied on the fact that for 6 years the office had observed business hours from 8 a.m. to 4:30 p.m., even though there was no regulation establishing such hours. In Owens-Illinois Glass Co. v. District of Columbia, 204 F.2d 29 (C.A.D.C., 1953), the court took a stricter view, holding that "in the absence of established office hours" one can file until the clock strikes at midnight of the last day and that a document deposited in an office on that day after office hours but before midnight is timely filed. The court did not say how office hours must be

established in order to confine valid filings to such hours. It would seem amply clear, however, that a published regulation would be sufficient.

The Department has adopted such a regulation (43 CFR, 1956 Supp., 101.20). It provides that--

The hours during which the land offices and the Washington office are open to the public for the filing of documents and inspection of records are from 10:00 a.m. to 3:00 p.m., standard time or daylight saving time, whichever is in effect at the city in which each office is located.

(b) Any document required or permitted to be filed under the regulations of this chapter, which is received in the Land office or the Washington office, either in the mail or by personal delivery when the office is not open to the public shall be deemed to be filed as of the day and hour the office next opens to the public.

This regulation became effective on July 28, 1956, and was in effect at the time the company filed its application for extension on August 31, 1956. Therefore, the company's application was properly deemed to have been filed on September 4, 1956, the first day the land office next opened after the closing on Friday, August 31, 1956, or after the expiration of the primary term of the lease.

\* \* \* \* \*

The same concept has been applied to the automatic termination provision.

In Duncan Miller, 66 I.D. 342 (1959), the Acting Solicitor discussed that provision of the Mineral Leasing Act. After finding that the lessee could continue his lease by paying rental on the anniversary day and that the lease remained in effect the whole of that day, the Assistant Solicitor emphasized that rental had to be paid during business hours on the anniversary date. He stated:

Thus, it was the clear intent of the Department and Congress that a lessee has the whole of the anniversary date of the lease while the land office is open for business within which he may pay his advance rental and prevent the automatic termination of his lease,

and, until the anniversary date has passed, the lease is not terminated. Cf. W. V. Moore, 64 I.D. 419 (1957).

Therefore, in this case since Miller's prior lease had as its anniversary date November 1, Miller could have paid the rental at any time during the day that the land office was open for business, and since this was so the lease remained in effect until the end of November 1, 1955. \* \* \* [Emphasis supplied.]

The same considerations of policy, fairness and administrative propriety are pertinent here.

The Board has upheld the requirement as applied to the automatic termination of an oil and gas lease.

Where the rental was received at 4:05 p.m., the office having closed at 4 p.m., the Board held that payment must be considered as having been made the next day, the lease had terminated, and reinstatement was not proper. M. J. Harvey, 19 IBLA 230 (1975). Therefore, here too, the payments having been made after the close of business hours must be deemed to have been made the next day. Thus it was late and the lease terminated automatically.

The waiver provisions of 43 CFR 1821.2-2(g) are not applicable because once the lease has terminated, the waiver of late payment is prohibited by the statute (supra) making termination automatic. Here it is not late payment that would be waived, but the regulations setting office hours and fixing the consequences of payment after office hours. Furthermore, even if these provisions were applicable, the facts would not warrant their application.

[2] Under certain circumstances, reinstatement of a terminated oil and gas lease is possible. The lessee must show that his failure to pay on or before the anniversary date "was either justifiable or not due to a lack of reasonable diligence \* \* \*." 30 U.S.C. § 188(c) (1970). Appellant points out that "justifiable delay" in making an oil and gas lease rental payment will be recognized where sufficiently extenuating circumstances are present so as to affect the lessee's actions. Louis Samuel, 8 IBLA 268 (1972). Appellant argues that the alleged bomb scare and resulting delay fits within this exception.

Upon inquiry to the Federal Protection Service which provides security services to the Federal Office Building in which the BLM offices are situated, the Board was informed that increased security measures were in effect, not as a result of a bomb scare within the building, but as a short-term, general security policy following bombings which occurred in Government buildings in Washington, D.C.,



and San Francisco, California. The security precautions simply included an identification check, i.e., providing a proper identification such as a driver's license and explaining one's purpose for being in the building. The Board was informed that during normal business hours the identification check took no longer, on the average, than 30 seconds to one minute.

Appellant argues that the delay caused by the added security precautions was an event, comparable to "natural disasters, such as floods [and] earthquakes," and was thus a factor beyond appellant's control which resulted in justifiable delay in payment. We cannot agree that a brief identification check, a common practice in many Federal office and court buildings, can be considered a sufficiently extenuating circumstance that would justify appellant's late payment. As the BLM correctly pointed out, the actual cause of the late payment was appellant's failure to exercise reasonable diligence. Appellant contacted his agent only 20 minutes prior to the payment deadline. His agent resides "normally a ten-minute drive from the site" of the BLM offices and was delayed in "heavy traffic." Reasonable diligence requires delivering payment sufficiently in advance of the deadline to account for normal delays. 43 CFR 3108.2-1(c)(2); see M. J. Harvey, Jr., supra; William C. McCullough, 18 IBLA 97 (1974). Accordingly, we find that the BLM's rejection of appellant's petitions for reinstatement was proper.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

---

Martin Ritvo  
Administrative Judge

I concur:

---

Joan B. Thompson  
Administrative Judge

## ADMINISTRATIVE JUDGE GOSS DISSENTING:

I respectfully dissent. It is clear that in no event would appellant's leases have terminated until the midnight following the closing of the BLM office on March 3, 1975. <sup>1/</sup> Appellant's payments were made before that time. The appeal, therefore, concerns the Department's determination of the time of its official acceptance of the payments.

The Departmental regulations herein concerned provide as follows:

## CHAPTER II - BUREAU OF LAND MANAGEMENT

\* \* \* \* \*

## PART 1820--APPLICATION PROCEDURES

## Subpart 1821--Execution and Filing of Forms

## § 1821.2-1 Office hours; place for filing.

(a) The offices listed in paragraph (d) of this section are open to the public on Monday through Friday for the filing of applications and other documents and inspection of records from 10 a.m. to 4 p.m., standard time or daylight saving time, whichever is in effect at the city in which the office is located, with the exception of those days when the office may be closed because of a national holiday or by Presidential or other administrative order. [Emphasis added.]

(b) Applications and other documents cannot be received for filing by the authorized officer out of office hours, nor elsewhere than at his office; nor can affidavits or proofs be taken by him except in the regular and public discharge of his ordinary duties.

\* \* \* \* \*

---

<sup>1/</sup> In his June 5, 1962, letter to the Chairman of the Senate Interior and Insular Affairs Committee, the Secretary stated that the termination by law of an oil and gas lease occurs at midnight. 1962 U.S. Code Cong. and Ad. News at 3242.

(d) Location of the offices and area of jurisdiction of each office in which applications for rights and privileges under subchapters A, B, and C of this title must be filed are as follows:

Office:	<u>Area of jurisdiction</u>
---------	-----------------------------

*      *      *      *      *      *      *
---

Utah State Office, Federal  
Building, Salt Lake City,  
Utah 84111.

Utah

*      *      *      *      *      *      *
---

§ 1821.2-2 Time limit for filing documents.

*      *      *      *      *      *      *
---

(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the proper office, either in the mail or by personal delivery when the office is not open to the public, shall be deemed to be filed as of the day and hour the office next opens to the public.

*      *      *      *      *      *      *
---

(g) When the regulations of this chapter provide that a document must be filed or a payment made [2/] within a specified period of time, the filing of the document or the making of the payment after the expiration of that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where:

1. The law does not permit him to do so.
2. The rights of a third party or parties have intervened.

---

2/ Emphasis added.

3. The authorized officer determines that further consideration of the document or acceptance of the payment would unduly interfere with the orderly conduct of business. [3/] [Emphasis added.]

\* \* \* \* \*

#### Subpart 1822--Payments and Repayments

\* \* \* \* \*

#### § 1822.1 Payments. [4/]

\* \* \* \* \*

It is likely that appellant's agent was in the BLM office building prior to 4 p.m., although not in the BLM office itself. The BLM Office Directory shows the office hours of the Utah State Office as 7:45 a.m. to 4:30 p.m. The office was open when appellant's payments were made, although not open for the purposes listed in subsection 1821.2-1(a) and (b). A payment made after 4 p.m. but when the office is open is, under subsection 1821.2-2(d), deemed filed as of 10 a.m. on the following work day.

Where a lessee submits his annual rental payment after the filing deadline imposed under the Chapter II Departmental regulation, supra, but before termination of the lease by operation of law, subsection 1821.2-2(g) provides under certain circumstances authority for the Department to consider the payment as having been timely filed. Subsection 1821.2-2(g) was added in 1964 as a remedial regulation to permit relief in this type of situation. As such, the regulation should be liberally construed to effect its obvious purpose. See Louis Samuel, 8 IBLA 268, 271 (1972) citing 3 SUTHERLAND, STATUTORY CONSTRUCTION § 5701 (1943). The majority herein does not discuss when, if ever, the Secretary's 1964 regulation should be applied. As stated by Acting Secretary Carver, the 1964 amendment "involves \* \* \* the grant of additional privileges, and does not place any burden on interested parties." 29 F.R. 14439. There is no indication in the record that any of the three exceptions listed in subsection 1821.2-2(g) should prohibit the granting of relief

---

3/ See M. J. Harvey, Jr., 19 IBLA 230 (1975), wherein payment was delivered after the office was closed, to an engineer whose duties did not include acceptance of payments.

4/ Nothing in section 1822.1 is applicable.

to appellant. On the basis of that subsection, appellant's payments should be deemed timely. It is therefore not necessary to consider the question of reinstatement under section 188(c).

---

Joseph W. Goss  
Administrative Judge

